

Central Adminisrative Tribunal
Principal Bench, New Delhi

O.A.No.3406/2001

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Hon'ble Shri Shanker Raju, Member(J)

Friday, this the 16th day of August, 2002

Shri Aiya Swami
s/o Shri R.Mugan
r/o Q.No.D-13, Samalka
Distt. Panipat. ... Applicant

(By Advocate: Sh. Surinder Singh)

Vs.

1. Union of India through
The General Manager
Northern Railway
Headquarters
Baroda House
New Delhi.
2. Divisional Railway Manager
New Delhi.
3. Senior Executive Engineer/Construction
Minto Bridge
New Delhi. ... Respondents

(By Advocate: Ms. Anju Bhushan)

O R D E R (Oral)

By Shri Shanker Raju, M(J):

Heard the learned counsel on either side.

2. By this OA, applicant impugns respondents' order Annexure-A1 (Coly.) wherein rejected his request for change of date of birth from 30.3.1942 to 22.4.1956.

3. Applicant was earlier engaged by the respondents, being an illiterate, ^u he has filed an affidavit on 10.5.1977, wherein he has declared his date of birth as 30.3.1942.

4. While appointment of the applicant as Gangman was considered, he was subjected to a medical examination for ascertaining his fitness. The medical authority, i.e., Divisional Medical Officer, Panipat in his certificate ^w has mentioned the applicant's date of birth as 22.4.1956. In the leave account as well as service card, the date of birth of the applicant has figured as 30.3.1942.

5. In the retirement list of staff was issued on 19.9.2001 wherein the name of the applicant was mentioned at Sl. No.5 showing his date of birth as 30.3.1942 and he be retired on 31.3.2002. Applicant preferred a representation on the basis of the date of birth figured in the medical fitness certificate which remain undisposed. Applicant preferred OA 2652/2001 whereby by an order dated 5.10.2001 respondents have been directed to consider the representation of the applicant by passing a speaking order.

6. In compliance of the above, respondents have issued the order on 13.11.2001 stating that date of birth of the applicant is correct as per his affidavit and recorded in leave account and service card. As such his request for change of date of birth at the fag end of service was rejected, giving rise to the present OA.

7. Learned counsel for the applicant contended that the date of birth earlier figured as 30.3.1942 was doubtful as such the applicant was medically examined by the DMO where the date of birth was determined as 22.4.1956 the respondents are

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estopped⁴ from treating the applicant's date of birth as 30.3.1942. It is further stated by Shri Singh that they have never been intimated to the applicant earlier but on retirement he was aware of the same. It is stated that change of date of birth on the basis of the medical examination which is the authentic proof and should be relied upon. The affidavit which was on Left Thumb Impression quoted, being an illiterate, is not an evidence of date of birth.

8. It is further stated that the medical examination was only meant for determination of age which was conducted by DMO, Panipat.

9. On the other hand, respondents' counsel, Ms. Anju Bhusan denied the contentions of the applicant and further stated that documents such as service card and leave account though seeing⁴ by the applicant number of times and lastly on 27.1.2000, but no objection had been made. Accordingly, the retirement list was issued on the basis of the date of birth declared on his own volition by the applicant.

10. She has further stated that the medical examination was with a view to ascertain the fitness of the applicant and inadvertently date of birth of the applicant was figured therein as 22.4.1956. As there was no reference of the DMO for determination of date of birth, the same cannot be treated as date of birth and lastly, it is contended that the representation was rejected through a speaking order and at the fag end of service, date of birth cannot be altered.

11. I have carefully considered the rival contentions of both the parties and also perused the material on record. The Apex Court in G.M. Bharat Coking Coal Ltd., West Bengal v. Shib Kumar Dushad & Others, JT 2000(Suppl.2) SC 325 has made the following observation:

"The date of birth of an employee is not only important for the employee but for the employer also. On the length of service put in by the employee, depends the quantum of retiral benefits he would be entitled to. Therefore, while determining the dispute in such matters, courts should bear in mind that a change of the date of birth long after joining service, particularly when the employee is due to retire shortly, which is likely to upset the date recorded in the service records maintained in due course of administration, should not generally be accepted. In such a case, the burden is heavy on the employee who comes to the court with the case that the date of birth in the service record maintained by the employer is untrue and incorrect. The burden can be discharged only by producing acceptable evidence of a clinching nature."

12. Moreover, Apex Court in Vizagapatnam Dock Labour Board v. E.Archana & Ors, JT 1996(3) SC 6 as well as in State of Orissa Vs. R.Patnaik, JT 1997(4) SC 660, held that change of date of birth after a long period at the fag end of service without explanation of delay and on the evidence produced subsequently during or after service is of no avail, as applicant himself endorsed the service record of date of birth, cannot be countenanced.~

13. However, if one has regard to the aforesaid rulings of the Apex Court, applicant is estopped from claiming alteration of date of birth, once the same has been declared by a duly sworn affidavit by putting his Left Thumb Impression where the date of birth as 30.4.1942 has been declared is at his own volition, the same has been rightly treated as the date of birth of the applicant.

14. Moreover, medical examination conducted by the DMO was not with regard to ascertainment of date of birth. On his appointment as Gangman applicant was medically examined for his fitness. As the respondents have stated that there has been a wrong and inadvertent mistake in recording his date of birth as 22.4.1956 by the DMO, the same cannot be treated as the date of birth of the applicant. I am in full agreement to this. Moreover, nothing has been brought on record to establish that the medical examination was not for fitness but for ascertaining the date of birth and nothing material has been shown to prove that ^{the respondents} themselves called the applicant for medical examination as the earlier date of birth declared was not acceptable to them, the plea of applicant is found bereft of merit.

15. Moreover, I find that in the leave account as well as service card of the applicant, the date of birth recorded was 30.3.1942, which was very much in the knowledge of the applicant as he had himself inspected the same. Despite this, the applicant had failed to object during the long tenure of service. Now, on the basis of the retirement list issued at the fag end of service career in view of the decision of the Apex



Court and in absence of any authentic proof of date of birth, prayer for alteration of date of birth cannot be allowed, as this would upset the administration in maintaining the service record in proper.

16. In this view of the matter, having regard to the reasons recorded above, the OA is bereft of merit and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member(J)

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